

The Federal Mine Safety and Health Act of 1977 (Pub. L. 95-173, as amended by Pub. L. 95-164, November 9, 1977) (hereinafter referred to as the Act) is a Federal statute designed to achieve safer and more healthful conditions in the nation's mines. Effective implementation of the Act and achievement of its goals depend in large part upon the active but orderly participation of miners at every level of safety and health activity. Therefore, under the Act, miners and representatives of miners are afforded a wide range of substantive and procedural rights. Section 103(f) provides an opportunity for the miners, through their representatives, to accompany inspectors during the physical inspection of a mine, for the purpose of aiding such inspection, and to participate in pre- or post-inspection conferences held at the mine. As the Senate Committee on Human Resources stated, "If our national mine safety and health program is to be truly effective, miners will have to play an active part in the enforcement of the Act." S.Rep. No. 95-181, 95th Cong., 1st Sess., at 35 (1977).

Further, in 1978 the Secretary promulgated 30 C.F.R. Part 40 wherein he defined a representative of miners to mean: "(1) Any person or organization which represents two or more miners at a coal or other mine for the purposes of the Act" and (2) "Representatives authorized by miners", "Miners or their representatives", "authorized miner representative" and other similar terms as they appear in the Act. (§ 40.1).

I agree with Emery that it seems beyond contradiction that there are two principal reasons for the § 103(f) walkaround right. They are to increase the safety awareness of miners and to produce more thorough inspections through the participation of those familiar with the conditions being inspected. However, I do not concur with Emery's view that a colloquy ^{15/} between Senators Helms and Javits is determinative of the final scope of this section.

Contrary to Emery's views Senate Report No. 95-181 contained in the legislative history is much more persuasive. On the point the report states as follows:

The right of miners and miners' representatives to accompany inspectors

Section 104(e) contains a provision based on that in the Coal Act, requiring that representatives of the operator and miners be permitted to accompany inspectors in order to assist in conducting a full inspection. It is not intended, however, that the absence of such participation vitiate any citations and penalties issued as a result of an inspection.

^{15/} The senators, in discussing § 103(f), referred to "employees" and "miners."